IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1200 OF 2003

IN

SUIT NO. 803 OF 2003

Duraiya Mansur Petiwala and anr. .....Plffs.
vs.
Shabbir Hussain Taherbhai
Petiwala and Ors. .....Defnds.

D.D. Madon a/w. Colabawala i/b. Madekar and Co.
for the plaintiffs.
Birendra Saraf i/b. ALMT Legal
for defendant no2..
Zal Andhyarujina a/w. Samidha Vedpathak
i/b. Maneksha Sethna for defendant no.4.
Vivek Sharma for defendant no.3(b).
Vivek Kantawala for defendant no.1.

CORAM: S.U. KAMDAR, J.

DATE : 23rd September, 2005.

P.C. :

1. The present suit is for cancellation of MOU dated 4.4.97. The MOU is a family arrangement between the parties which has been arrived at. The

recital of the said arrangement reads as under :

> "And whereas after long discussion and negotiations between the parties and as per the desires of later Mr. Taherbhai Esmailjee (vide document dated 9/2/78) hereto it was orally decided by way of a family arrangement to settle the disputes and differences with a view to bring about amity and goodwill amongst them and accordingly the oral settlement was recorded vide memorandum of understanding dated 31.5.86 arrived at between them whereby the right, title and interest of each of the parties hereto is clearly specified."

2. Under this MOU which was agreed that three office premises being Office No.41, 42 and 43 in Makers Chamber no.6 is to be transferred as under :

> Office no.42 shall belong equally to Shabhir Hussein and Farida
>
> Office No.42 shall belong equally to Shabhir Hussein and Farida and
>
> Office No.43 shall belong equally to Mansur and Duraiya.

3. This three office premises prior to the said family arrangement arrived at was standing in the name of the parties as under :

> Office No.41- Mrs. Rukhanbai Taherbhai Pettiwala
> Shabbir Hussein

	Munsoor Taherbhai
Office No.42-	Shabir Hussein Taherbhai Munsoor Taherbhai
Office No.43-	Farida Shabhir Hussein Duraiya Munsoor, Shabbir Hussein Munsoor Taherbhai

4. It is the case of the plaintiff that the said arrangement should be cancelled and should be declared void and consequently cancelled under the provision of Specific Relief Act. It is his case that the document which is referred to being document dated 19.2.78 though referred to in the said MOU was never produced and there is no such documents existing and he was made to believe that there is such document and believing the said representation he has entered into the said MOU. The defendants have produced a typed copy of the document annexed to the affidavit. I am not satisfied with the contention of the learned counsel or the plaintiff that the said MOU is required to be cancelled merely on the ground that the said document is not produced. Firstly the plaintiffs were aware that there is such a document dated

19.2.78 in existence and they were aware of the contents thereof on the basis of which the said MOU has been entered into.. Even assuming that such document was not produced by the defendant at that relevant time in 1997 it was open for the plaintiff to call upon the defendant to show the said document which was referred to in the said MOU. In my opinion there is no ground made out for the purpose of cancellation of the said document.

5. The second contention raised that the plaintiff no.2 was not mentally well. The said contention is also equally without any merits. Prima-facie I am of the opinion that when there is no dispute that plaintiff no.1 is sane and who is also a party to the said document of MOU and who is also challenging the present MOU. In my opinion the plaintiffs have made out no case for cancellation of the said document.

6. Apart therefrom how and when they realised that the said document is not existing is not at all set out in the plaint. The case of fraud and

misrepresentation is required to be pleaded in detail under the provisions of CPC. The averments which are set out in the plaint does not makes out any case of any alleged fraud or misrepresentation nor there is sufficient material to even prima-facie hold that the said document is obtained by fraud or misrepresentation. In that view of the matter no case is made out for ad-interim reliefs. Motion dismissed. No Order as to Costs.

sd/-

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